

State of California—Health and Human Services Agency  
**Department of Health Services**



**ARNOLD SCHWARZENEGGER**  
Governor

**ACTION:** Notice of Proposed Rulemaking  
Title 22, California Code of Regulations

**SUBJECT:** Interim Enhanced Surface Water Treatment Rule, R-20-01

**PUBLIC PROCEEDINGS:** Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (USEPA) under the Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f et seq.) as well as by the California Department of Health Services (Department) under the California Safe Drinking Water Act (Health & Saf. Code, div. 104, pt. 12, ch. 4, § 116270 et seq.)

On December 16, 1998, the USEPA promulgated the Interim Enhanced Surface Water Treatment Rule (63 Fed. Reg. 69478; amended Jan. 16, 2001, 66 Fed. Reg. 3770), as required by the Safe Drinking Water Act Amendments of 1996 (SDWAA), which provides increased public protection against microbial pathogens, specifically the protozoan *Cryptosporidium*. Additionally, on June 8, 2001 the USEPA promulgated the Filter Backwash Recycling Rule (66 Fed. Reg. 31086), also as required by the SDWAA.

California has been granted "primacy" for the enforcement of the SDWAA. To receive and maintain primacy, states must promulgate regulations that are no less stringent than the federal regulations. The Department is proposing these regulations to fulfill the federal primacy requirements.

California currently requires water suppliers to filter and disinfect surface water and groundwater under the influence of surface water. (Cal. Code Regs., tit. 22, div. 4, ch. 17, § 64650 et seq.) Pursuant to federal primacy requirements and Health and Safety Code (H&S Code) section 116375, the Department proposes the following regulations that would reduce turbidity limits and increase monitoring requirements for surface water treatment facilities.

The Department proposes the following amendments to chapter 17, division 4, title 22, California Code of Regulations (CCR).

- To amend the following to update references to outdated section numbers:
  - Section 64651.10
  - Section 64658(a)
  - Section 64662(b)
- To amend the following to correct typographical errors:
  - Section 64651.53
  - Sections 64652.5(a) and (c)
  - Sections 64654(c)(1), (2), and (3)
  - Section 64660(b)(1)
  - Section 64664(e) (formerly (d)), references to operating criteria specified in sections 64660(b)(6) and (8) replaced with sections 64660(b)(7) and (9).
- To amend the following to consistently use the term *Giardia lamblia* in lieu of *Giardia*, *Giardia lamblia*, and *Giardia lamblia*:
  - Section 64650(a)
  - Section 64651.50
  - Section 64652(a)(1)
  - Sections 64652.5(e), (e)(4), (k)(1), and (l)
  - Sections 64653(b) and (f)
  - Section 64654(a)
  - Section 64660(b)(5)(A)
- To amend the following to accommodate the insertion of new subsections:
  - Former section 64652(d) is re-assigned as 64652(e)
  - Former sections 64655(b)-(d) are re-assigned as 64655(e)-(g)
  - Section 64655(e) (formerly (b)) is amended to update new section references
  - Former sections 64664(d) and (e) are re-assigned as 64664(e) and (f)
- To revise chapter 17 by adopting the following, pursuant to federal primacy requirements:
  - Section 64651.21 Definition of comprehensive performance evaluation
  - Section 64651.34 Definition of disinfection profile
  - Section 64651.38 Definition of filter profile
  - Section 64651.88 Definition of uncovered finished water storage facility
  - Section 64652(d)
  - Section 64653(c)(3)
  - Section 64653.5
  - Section 64655(h)
  - Section 64657 General requirements
  - Section 64657.10 Criteria for avoiding filtration
  - Section 64657.20 Disinfection profiling and benchmarking

- Section 64657.30 Filtration
  - Section 64657.40 Filtration sampling
  - Section 64657.50 Supplemental reporting and recordkeeping
  - Section 64660(b)(5)(C)
  - Section 64664(g)
- To revise chapter 17 by amending the following, pursuant to federal primacy requirements:
    - Section 64650(a)
    - Section 64651.50
    - Sections 64652.5(a) and (i)
    - Section 64653(f)
    - Sections 64662(a)(1) and (b)
    - Sections 64666(a) and (b)

The following proposed amendments contain additional requirements or provisions that are not found in the Federal Register:

- To amend section 64651.60 to correct the definition and update the reference to the approved analytical methods.
- To amend section 64654(b)(2) to clarify compliance requirements.
- To amend section 64655 to provide a more appropriate title for the section.
- To adopt section 64655(b), requiring the monthly monitoring of source water for total coliform and either fecal coliform or *E. coli* bacteria.
- To adopt section 64655(c), requiring the daily monitoring of settled water for turbidity.
- To adopt section 64655(d), requiring the monitoring of recycled backwash water for turbidity and flow.
- To amend section 64661(a) to clarify that all treatment plants shall operate under an approved operations plan.
- To amend section 64661(b) to require the inclusion of a filter media inspection program in the operations plan.
- To amend section 64663(a) to include Department notification whenever monitoring conducted pursuant to section 64657.40 indicates a combined filter effluent in exceedance of 5.0 Nephelometric Turbidity Units (NTU).
- To amend section 64663(b) to include Department notification whenever samples collected pursuant to section 64657.40 exceeds 1 NTU for more than 1 hour or 1.0 NTU for more than 8 hours.
- To adopt section 64664(d) to require in the monthly report the inclusion of analytical results of raw and process water samples collected pursuant to sections 64655(a)-(d).
- To amend section 64664(e) (formerly 64664(d)) to include violations of performance standards specified in section 64657.30.
- To amend section 64666(c) to refer to sections 64463.1 and 64463.4 as a whole, as opposed to specific subsections within those sections.

The net effect would be that:

- Suppliers using an approved surface water source and serving at least 10,000 people would be required to provide at least 99 percent removal of *Cryptosporidium* oocysts, which would be accomplished through the attainment of more stringent turbidity standards.
- Suppliers using an approved surface water source and serving at least 10,000 people would be required to determine their annual average concentration of total trihalomethanes (TTHM) and haloacetic acids (HAA) (five), and if the annual averages exceed or equal either 0.064 mg/L or 0.048 mg/L respectively, the supplier would be required to conduct disinfection profiling and calculate a benchmark.
- All suppliers using an approved surface water source would be required to:
  - Provide the Department with information about filter backwash recycle flows and return such flows to the headworks of the treatment plant.
  - Conduct monthly source water monitoring for bacterial concentrations.
  - Conduct daily monitoring of settled water turbidity.
  - Conduct monitoring of recycled backwash water for turbidity and flow.
  - Include a filter media inspection program in the operations plan.

Adoption of these requirements would satisfy the federal primacy requirements related to the adoption of regulations at least as stringent as the federal.

### **Documents Incorporated by Reference**

The following documents are incorporated by reference in the regulations as it would be too cumbersome, unduly expensive, or impractical to publish these documents into regulation.

- 1) 40 Code of Federal Regulations parts 141.172(a), (b), and (c) (63 Fed. Reg. 69477 (December 16, 1998)), "Interim Enhanced Surface Water Treatment Rule".
- 2) 40 Code of Federal Regulations parts 141.172(a) and (b) (66 Fed. Reg. 3769 (January 16, 2001)), "Revisions to the Interim Enhanced Surface Water Treatment Rule and Stage 1 Disinfectants and Disinfection Byproducts Rule".
- 3) 40 Code of Federal Regulations part 141.74(a)(1) (67 Fed. Reg. 65888 (October 29, 2002)), "Approval of Analytical Methods for Chemical and Microbiological Contaminants".
- 4) Optimizing Water Treatment Plant Performance Using the Composite Correction Program, EPA Handbook, Chapter 4, pages 21-65, Office of Research and Development, U.S. Environmental Protection Agency; EPA/625/6-91/027 (revised August 1998).

AUTHORITY: Sections 100275 and 116375, Health and Safety Code.

REFERENCE: Sections 116270, 116275, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625, 116735 and 116750, Health and Safety Code.

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on \_\_\_\_\_, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, California Department of Health Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-7714; or
3. By email to [regulation@dhs.ca.gov](mailto:regulation@dhs.ca.gov) (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "R-20-01" in the subject line to facilitate timely identification and review of the comment), or
4. By using the "Making Comments on DHS Regulations" link on the Department website at <http://www.applications.dhs.ca.gov/regulations/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES: Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Michael G. McKibben, P.E., **Senior Engineer**, Standards and Technology Unit, Drinking Water Program, at (619) 525-4023.

All other inquiries concerning the action described in this notice may be directed to Don Lee of the Office of Regulations, at (916) 440-7673, or to the designated backup contact person, Linda Tutor, at (916) 440-7695.

**CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, R-20-01.**

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at <http://www.applications.dhs.ca.gov/regulations/> and then clicking on the "Select DHS regulations" button.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email [regulation@dhs.ca.gov](mailto:regulation@dhs.ca.gov), or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

**FISCAL IMPACT ESTIMATE:**

- A. Fiscal Effect on Local Government: \$44,430,980.
- B. Fiscal Effect on State Government: \$1,022,740.
- C. Fiscal Effect on Federal Funding of State Programs: None.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. For a representative private person or business an annual cost of \$198,000 is estimated. The total estimated cost to private persons and businesses that operate public water systems is \$14,035,600 annually to implement the IESWTR requirements already in effect and enforced by USEPA. Most water systems have chosen to comply with the State-only requirements already.

E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with section 17500) of Division 4 of the Government Code.

However, if they were to incur costs, those costs would be of the following nature:

First, some local agencies would incur costs in their operation of public water systems. These costs would not be the result of a “new program or higher level of service” within the meaning of Article XIII B, Section 6 of the California Constitution because they apply generally to all individuals and entities that operate public water systems in California and do not impose unique requirements on local governments. Therefore, no state reimbursement of these costs would be required.

Second, some local agencies could incur additional costs in discharging their responsibility to enforce the new regulations for the small public water systems (under 200 service connections) that they regulate. However, the Department has determined that any increase in the local agency costs resulting from enforcing this regulation would be insignificant. Furthermore, local agencies are authorized to assess fees to pay reasonable expenses incurred in enforcing statutes and regulations related to small public water systems, H&S Code section 101325. Therefore, no reimbursement of any incidental costs to local agencies in enforcing this regulation would be required, Government Code section 17556(d).

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations will not significantly affect the following:

1. The creation or elimination of jobs within the State of California. The requirements summarized above should not have any affect in this area in that there would not be any change in water system or regulatory personnel needed for compliance with the proposed requirements.
2. The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the water industry is such that the proposed regulation will not result in the creation or elimination of water systems. The impact of these regulations will be insignificant.
3. The expansion of businesses currently doing business within the State of California. Since water system size is basically a function of the number of service connections

(consumers) served, the proposed regulations should not have any effect on expansion.

The Department has determined that the proposed regulations would not affect small business, since Government Code Chapter 3.5, Article 2, section 11342.610 excludes drinking water utilities from the definition of small business.

The Department has determined that the regulations will have no impact on housing costs.

**ADDITIONAL STATEMENTS AND COMMENTS:** In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code section 11346.8.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Don Lee, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7673 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

## CALIFORNIA DEPARTMENT OF HEALTH SERVICES

R-20-01

Dated: Sandra Shewry  
Director